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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

Frank E. Pierce III, IRA ("Pierce IRA"), by and through its attorneys, hereby objects to the Notice of Trustee's Determination of Claim dated December 8, 2009 ("Determination Letter"), attached as Exhibit A, as described herein.

BACKGROUND

1. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See* Order, *Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“BMIS Trustee”), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; *see also* 15 U.S.C. 78fff-1(a).

2. Pierce IRA is an investor in Greenwich Sentry Partners, L.P. (“Greenwich Sentry Partners”), through an account with First Trust Corporation (“First Trust”), and, on information and belief (including information provided by Fairfield Greenwich (Bermuda) Ltd., the General Partner of Greenwich Sentry Partners), Greenwich Sentry Partners is a “customer,” as defined by the Securities Investor Protection Act of 1970 (“SIPA”), of BMIS. Thus, Pierce IRA has an interest in certain claims belonging to Greenwich Sentry Partners and/or First Trust in the BMIS liquidation proceeding.

3. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See* Order [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS’s customers in accordance with the Court’s Order.

4. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee “shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” *See* Order at 6 (emphasis added) [Dkt. No. 12].

5. On or about July 1, 2009, Pierce IRA submitted a customer claim form to SIPC, which was designated as Claim No. 015148 by the BMIS Trustee (“Pierce Customer Claim”) (Exhibit B).¹

6. On December 8, 2009, the BMIS Trustee sent Pierce IRA the Determination Letter disallowing Pierce IRA’s claim in its entirety on the basis that it “is not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 7811(2).” *See* Determination Letter (Exhibit A).

OBJECTION

7. Pierce IRA hereby objects to the Determination Letter on the basis of the reasons set forth herein.

8. First Objection. Normally, bankruptcy law prevents parties whose claims are derived from the claim of a creditor from seeking to recover on such derived claims from the debtor. Such rules are designed to prevent duplicate recoveries arising from what amounts to a single legal claim. *See* Bankruptcy Code §§ 502(e), 509. However, bankruptcy law also recognizes that the derivative claimant should be permitted to file such a claim when the direct creditor fails or refuses to file or prosecute a claim since, in such cases, there is no risk of a double recovery. For example, bankruptcy law provides that “[i]f a creditor does not timely file a proof of such creditor’s claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.” *See* Bankruptcy Code § 501(b); *see also* Fed. R. Bankr. P. 3005(a). To the extent that this is the case here with respect to Greenwich Sentry Partners, First Trust, or any other entity, these principles apply here and it is only appropriate and equitable that Pierce IRA’s claim be considered and honored, as there is no

¹ In accordance with the Court’s Order dated October 20, 2009 [Dkt. No. 533], Claimant’s personal identification data has been redacted from Exhibit B.

danger of double recovery to the extent that these entities have failed to file and/or prosecute or defend any claims on their own behalves or on behalf of Pierce IRA.

9. Second Objection. The BMIS Trustee has encouraged all those who lost money due to the Madoff Ponzi scheme to file customer claim forms. This includes investors such as Pierce IRA that invested “indirectly” with BMIS. The BMIS Trustee has clearly contemplated a scenario whereby “indirect” investors, such as Pierce IRA, would be entitled to have their claims allowed and/or paid in this proceeding. To the extent that any such “indirect” claims are allowed and/or “indirect” claimants are deemed “customers” under SIPA by virtue of the present statute, any amended statute, any decision or ruling of any administrative agency, any decision or ruling by SIPC or the Madoff Trustee, or any decision or order of any court, he reserves the right to challenge any determination of his claim by the BMIS Trustee.

RELIEF REQUESTED

10. For the reasons stated herein, Pierce IRA’s claim should be allowed insofar as it is part of Greenwich Sentry Partner’s claim.

11. To the extent Pierce IRA’s claim is deemed to be filed on behalf of Greenwich Sentry Partners, First Trust, or any other entity, Pierce IRA reserves the right to supplement its claim and submit further objections to any Determination of Claim directed to Pierce IRA, including but not limited to the right to object to the BMIS Trustee’s method of calculating “net equity” or other objections to the method by which the BMIS Trustee has calculated the amount of the claim.

12. Pierce IRA requests such other relief as may be just and equitable.

CONCLUSION

13. Pierce IRA reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of Pierce IRA's right to object on any additional grounds.

14. Pierce IRA reserves all rights set forth in Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

15. Pierce IRA reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

16. Pierce IRA incorporates by reference all reservations of rights set forth in Pierce IRA's Customer Claim.

Dated: January 7, 2010

/s/ Jonathan M. Landers
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